



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
FREEDOM OF INFORMATION ACT BRANCH
Washington, D.C. 20570

Via email

September 27, 2022

Re: FOIA Request NLRB-2022-001847

Dear Jonathan Dortch (Sly Spectrum LLC):

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on September 6, 2022, in which you seek all available documents in *ClimateMaster, Inc., or as a single employer with Koax Corp.*, Case No. 14-CA-114274. You assumed financial responsibility for the processing of your request in the amount of \$37.00 and requested a waiver of fees.

We acknowledged your request on September 6, 2022. In order to find that a requester qualifies for a fee waiver or reduction, an agency must conclude that two statutory, and conjunctive, requirements have been satisfied. Pursuant to the FOIA and NLRB Rules and Regulations, fees shall be reduced or waived if the disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government” and that disclosure of the information and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 29 C.F.R. § 102.117(d)(2)(iv).

The Agency applies a six-factor test in deciding fee waiver requests. The first four factors address the public interest requirement: (1) whether the subject matter of the requested records, in the context of the request, specifically concern identifiable “operations or activities of the government;” (2) in order for the disclosure to be “likely to contribute” to an understanding of specific government operations or activities, whether the disclosable portions of the requested information will be meaningfully informative in relation to the subject matter of the request; (3) whether disclosure will contribute to “public understanding,” as opposed to the individual understanding of the requester or a narrow segment of interested persons; and (4) whether disclosure will contribute “significantly” to public understanding of government operations or activities. See *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 365 F.3d 1108, 1126 (D.C. Cir. 2004). Once a determination is made that the public interest requirement is met, the Agency then assesses whether disclosure of the information is not primarily in the requester’s commercial interest, considering two additional factors: (5)

whether as a threshold matter, the request involves any commercial interest of the requester that would be furthered by the disclosure, and (6) a balance of the requester's commercial interest against the identified public interest in disclosure to determine which interest is "primary." *VoteHemp, Inc. v. DEA*, 237 F. Supp. 2d 55, 64-65 (D.D.C. 2002). For a requester to qualify for a fee waiver, all six factors must be met. *Id.* at 58.

Furthermore, a requester seeking a waiver of fees must submit a written statement to the agency which affirmatively addresses both of the statutory requirements in sufficient detail. See *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987) (stating that conclusory statements will not support fee waiver request). In this regard, the requester must demonstrate his entitlement to a fee waiver. Here, you merely state that "research is being conducted for a documentary feature film," and fails to explain how this request will the public understanding of operations or activities of the government. You do not provide any rationale of how your request is of benefit to the public or that the public benefit outweighs your commercial interest. Rather, your fee waiver request is supported only by a conclusory statement which, as held in *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285-86 (9th Cir. 1987) is insufficient to support a fee waiver. Accordingly, on this basis, your request for a fee reduction or a fee waiver is denied. Instructions for how to appeal this determination can be found on the last page of this letter.

On September 13, 2022, in an email exchange with a member of my staff, you agreed to narrow your request to the formal records in *ClimateMaster, Inc.*, or as a single employer with *Koax Corp.*, Case No. 14-CA-114274.

A search of the Agency's electronic casehandling system, NxGen, has been conducted. This search has located 19 pages of responsive, releasable records from the requested case file, which are attached.

After a review, I have determined that portions of the attached records are exempt from disclosure under Exemptions 6 and 7(C) of the FOIA (5 U.S.C. § 552(b)(6) and (b)(7)(C)). Specifically, redactions have been made to protect the privacy interests of individuals named in the records. These redactions were made pursuant to FOIA Exemption 6, which pertains to information the release of which would constitute a clearly unwarranted invasion of personal privacy, and FOIA Exemption 7(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6) and (b)(7)(C).

For the purpose of assessing fees, we have placed you in Category A, commercial use requester. This category refers to requests "from or on behalf of a person who seeks information for a use or purpose that furthers the

commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation.” NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(v).

Consistent with this fee category, you “will be assessed charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought.” 29 C.F.R. § 102.117(d)(2)(ii)(A). Charges are \$9.25 per quarter-hour of professional time. 29 C.F.R. § 102.117(d)(2)(i).

Forty-five minutes of professional time were expended in searching for and reviewing for release the requested material. Accordingly, please remit \$27.75.

Payment Instructions: Due to the COVID-19 pandemic and resulting widespread employee telework at the Agency’s Headquarters offices, we are no longer accepting checks or money orders as payment at this time. To submit payment for your FOIA request, please use www.pay.gov. From the www.pay.gov home page, scroll down to the bottom left corner to select “Pay a FOIA Request.” Click “See all options” and go to “Filter By Agency” to check the box for the National Labor Relations Board. Continue following instructions on the website. Please remember to include the Invoice Number, which is the NLRB FOIA Case No., and the amount you intend to pay. Further, please be advised that all FOIA payments must be paid in full before any future FOIA requests are processed.

You may contact Joseph Mullaney, the Attorney-Advisor who processed your request, at (202) 273-3863 or by email at Joseph.Mullaney@nrlb.gov, as well as the Agency’s FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the Attorney-Advisor, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the FOIA Public Liaison is:

Kristine M. Minami
FOIA Public Liaison
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: FOIAPublicLiaison@nrlb.gov
Telephone: (202) 273-0902
Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
Email: ogis@nara.gov
Telephone: (202) 741-5770
Toll free: (877) 684-6448
Fax: (202) 741-5769

You may obtain a review of these determinations under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt
Chief FOIA Officer
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: DLCFOIAAppeal@nllrb.gov

Any appeal must be postmarked or electronically submitted within 90 calendar days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the Attorney-Advisor, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

/s/ *Synta E. Keeling*

Synta E. Keeling
FOIA Officer

Attachment: (19 pages)